



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

Reply To
Attn Of: ECL-115

27 June 2005

**URGENT LEGAL MATTER - PROMPT REPLY NECESSARY
FIRST CLASS CERTIFIED MAIL
RETURN-RECEIPT REQUESTED**

Mr. Wilmer L. Briggs
Energy and Materials Recovery, Inc.
11535 North Force Avenue
Portland, Oregon 97217

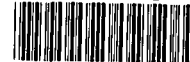
**Re: Special Notice Letter for Remedial Investigation/Feasibility Study
Harbor Oil Site, 11535 North Force Avenue, Portland, OR 97217**

Dear Mr. Briggs:

The U.S. Environmental Protection Agency (EPA) has received and reviewed your September 9, 2003, response to its July 29, 2003, Information Request, which was sent to Energy and Material Recovery Inc. (EMRI or you) in connection with the Harbor Oil Site (Site) located in Portland, Oregon. Based on your response and other available information, EPA has determined that you may be responsible under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as the federal "Superfund" law, for cleanup of the Site or costs EPA has incurred in cleaning up the Site. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), you may be responsible for cleanup of the Site, including all costs incurred by the EPA in responding to releases at the Site. EPA is now contacting EMRI in an attempt to resolve your responsibility at the Site.

EXPLANATION OF POTENTIAL LIABILITY

Under CERCLA, specifically Sections 106(a) and 107(a), potentially responsible parties (PRPs) may be required to perform cleanup actions to protect the public health, welfare, or the environment. PRPs may also be responsible for costs incurred by EPA in cleaning up the Site, unless the PRPs can show any of the statutory defenses. PRPs include current and former owners and operators of the Site, as well as persons who arranged for treatment and/or disposal of any hazardous substances found at the Site and persons who accepted hazardous substances for transport and selected the site to which the hazardous substances were delivered.



Based on the information collected, EPA believes that EMRI may be liable under Section 107(a) of CERCLA with respect to the Harbor Oil Site, as a current owner and/or operator of the Site.

To date, EPA has taken a response action at the Site under the authority of the Superfund program. Specifically, EPA has conducted a Preliminary Assessment (PA) and Site Investigation (SI) to gain a basic understanding of any risks posed to human health and/or the environment by releases or threatened releases from the Site. EPA has also undertaken activities to identify responsible parties.

SPECIAL NOTICE AND NEGOTIATION MORATORIUM

EPA has determined that use of the special notice procedures set forth in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), may facilitate a settlement between EMRI, the other PRPs, and EPA for performance of a Remedial Investigation and Feasibility Study (RI/FS) at the Site. A Remedial Investigation (RI) identifies Site characteristics and defines the nature and extent of soil, air, surface water, and groundwater contamination at the Site, and the risks posed by the Site. A Feasibility Study (FS) evaluates different cleanup options for the Site.

Under Section 122(e), this letter triggers a 60-day moratorium on certain EPA response activities at the Site. During this 60-day period, EMRI and other PRPs are invited to participate in formal negotiations with EPA in an effort to reach a settlement to conduct or finance the RI/FS. The 60-day negotiation period ends 60 days from the date stamped on this letter. The 60-day negotiation moratorium will be extended for an additional 30 days if the PRPs provide EPA with a "good faith offer" to conduct or finance the RI/FS. Under this 90-day negotiation moratorium, negotiations will conclude 90 days from the date stamped on this letter. If settlement is reached between EPA and the PRPs within the 90-day negotiation moratorium, the settlement will be embodied in an administrative order on consent to perform an RI/FS (AOC or Administrative Order).

GOOD FAITH OFFER

A proposed Administrative Order (Attachment 1), Statement of Work (Appendix B of Attachment 1), and a Proposed Technical Approach for Remedial Sampling (also included in Appendix B of Attachment 1) are enclosed to assist you in developing a good faith offer. As indicated, the 60-day negotiation moratorium triggered by this letter is extended for 30 days if the PRPs submit a good faith offer to EPA. A good faith offer to conduct or finance the RI/FS is a written proposal that demonstrates the PRPs' qualifications and willingness to conduct or finance the RI/FS and includes the following elements:

1. A statement of willingness by the PRPs to conduct or finance the RI/FS that is consistent with EPA's Statement of Work and draft Administrative Order and provides a sufficient basis for further negotiations.
2. A paragraph-by-paragraph response to EPA's Statement of Work and draft Administrative Order, including a response to any other attached documents.
3. A detailed description of the work plan, based on the Proposed Technical Approach for Remedial Sampling, identifying how the PRPs plan to proceed with the work.

4. A demonstration of the PRPs' technical capability to carry out the RI/FS, including identification of the firm(s) that may actually conduct the work or a description of the process they will use to select the firm(s).
5. A demonstration of the PRPs' capability to finance the RI/FS.
6. A statement of willingness by the PRPs to reimburse EPA for costs incurred in overseeing the PRPs' conduct of the RI/FS.
7. The name, address, and phone number of the party or steering committee that will represent the PRPs in negotiations.

DEMAND FOR PAYMENT

With this letter, EPA demands that you reimburse EPA for its costs incurred to date and encourages you to voluntarily negotiate a consent order in which you and other PRPs agree to perform the RI/FS.

In accordance with Section 104 of CERCLA, 42 U.S.C. § 9604, EPA has already undertaken certain actions and incurred certain costs in response to conditions at the Site. These response actions include conducting a PA/SI and initiating an enforcement action. EPA is seeking to recover from EMRI and other PRPs at the Site EPA's response costs and all the interest authorized to be recovered under Section 107(a) of CERCLA. The approximate total response costs identified through January 31, 2005 for the Site are \$193,621 (exclusive of NOAA and ATSDR costs); updated costs will be provided to PRPs upon request. Under Section 107(a) of CERCLA, EPA hereby makes a demand for payment from you and other PRPs for the total response costs plus all interest authorized to be recovered under Section 107(a).

Some or all of the costs associated with this notice may be covered by current or past insurance policies issued to EMRI. Most insurance policies will require that you timely notify your carrier(s) of a claim against you. To evaluate whether you should notify your insurance carrier(s) of this demand, you may wish to review current and past policies, beginning with the date of your first contact with the Harbor Oil Site, up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.

In the event that you file for protection in a bankruptcy court, you must include EPA as creditor, because EPA has a potential claim against you. EPA reserves the right to file a proof of claim or application for Reimbursement of Administrative Expenses.

PRP STEERING COMMITTEE

To assist PRPs in negotiating with EPA concerning this matter, EPA has included in Appendix A of the enclosed AOC a list of the names and addresses of other PRPs to whom EPA is sending this Notice. Also enclosed is one compact disk, which includes a Microsoft Excel spreadsheet prepared by EMRI, summarizing the information contained in available Site invoices.

EPA recommends that all PRPs meet to select a steering committee responsible for representing the group's interests. EPA recognizes that the allocation of responsibility among

PRPs may be difficult. If PRPs are unable to reach consensus, we encourage the use of the services of a neutral third party to help allocate responsibility. At the PRPs' request, EPA will provide a list of experienced third-party mediators or help arrange for a mediator.

PRP RESPONSE AND EPA CONTACT PERSON

You are encouraged to contact EPA within two weeks of your receipt of this letter to indicate your willingness to participate in future negotiations concerning this Site. You may respond individually or through a steering committee if such a committee has been formed. If EPA does not receive a timely response, EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the Site and that you have declined any involvement in performing the response activities.

Your response to this Special Notice Letter and the demand for costs included in it, including written proposals to perform the RI/FS for the Site, should be sent to:

Wallace Reid, Project Manager (ECL-115)
U.S. EPA Region 10
1200 Sixth Avenue, Seattle, WA 98101
(206) 553-1728, reid.wallace@epa.gov

The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final EPA position on any matter set forth herein. Due to the seriousness of the environmental and legal problems posed by the conditions at the Site, EPA urges that you give immediate attention and prompt response to this letter.

In addition, EPA will notify the Federal Natural Resource Trustees of EPA's intention to perform or enter into negotiations for the performance of response actions at the Site.

RESOURCES AND INFORMATION FOR SMALL BUSINESS

As you may be aware, on January 11, 2002, the Superfund Small Business Liability Relief and Brownfields Revitalization Act became law. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law and review EPA guidance regarding these exemptions at <http://www.epa.gov>.

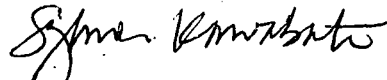
EPA has created a number of helpful resources for small businesses. The National Compliance Assistance Clearinghouse and Compliance Assistance Centers offer various forms of resources to small businesses. You may inquire about these resources or contact the EPA Small Business Ombudsman at <http://www.epa.gov>.

CLOSING

If you have any questions regarding the technical aspects of this letter, please contact Wallace Reid, Project Manager, at (206) 553-1728. If you have an attorney handling your legal matters, please direct his or her questions to Jennifer Byrne, Assistant Regional Counsel, at (206) 553-0050.

My staff and I look forward to working with you during the coming months.

Sincerely,



Sylvia Kawabata, Manager
Site Assessment and Cleanup Unit 2
Office of Environmental Cleanup

Attachments

cc: ***[email PDF transmittal copies only]***
Jennifer Byrne, Assistant Regional Counsel, U.S. EPA Region 10
Sylvia Kawabata, Unit Manager, U.S. EPA Region 10
Mavis Kent, Project Manager, ORDEQ, Northwest Region
Wallace Reid, Project Manager, U.S. EPA Region 10
Grechen Schmidt, Civil Investigator, U.S. EPA Region 10
U.S. National Oceanographic and Atmospheric Administration
U.S. Fish and Wildlife Service

U.S. Postal Service
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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

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Sent To
Wilmer Briggs, Energy & Materials Recovery, Inc.
Street, Apt. No.,
or PO Box No. 11535 N. Force Ave
City, State, ZIP+4
Portland, OR 97217

PS Form 3800, January 2001

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Wilmer Briggs
Energy & Materials Recovery
11535 N. Force Ave
Portland, OR 97217

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

Holly Carlson

6-29-05

C. Signature

[Signature] ☒ Agent

☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

- | | |
|---|---|
| <input type="checkbox"/> Certified Mail | <input type="checkbox"/> Express Mail |
| <input type="checkbox"/> Registered | <input type="checkbox"/> Return Receipt for Merchandise |
| <input type="checkbox"/> Insured Mail | <input type="checkbox"/> C.O.D. |

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)

PS Form 3811, July 1999

Domestic Return Receipt

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